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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/582,220	06/08/2006	Shinya Mizone	1343.46122X00	2916
20457 7590 06/19/2009 ANTONELLI, TERRY, STOUT & KRAUS, LLP 1300 NORTH SEVENTEENTH STREET SUITE 1800 ARLINGTON, VA 22209-3873				
EXAMINER SMITH, JEREMIAH R				
ART UNIT		PAPER NUMBER		
1791				
MAIL DATE		DELIVERY MODE		
06/19/2009		PAPER		

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

**Advisory Action  
Before the Filing of an Appeal Brief**

**Application No.**

10/582,220

**Applicant(s)**

MIZONE ET AL.

**Examiner**

JEREMIAH SMITH

**Art Unit**

1791

**--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

THE REPLY FILED 05 June 2009 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.  
 b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.  
 Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**NOTICE OF APPEAL**

2. ☐ The Notice of Appeal was filed on \_\_\_\_\_. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

**AMENDMENTS**

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because  
 (a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);  
 (b) ☐ They raise the issue of new matter (see NOTE below);  
 (c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or  
 (d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: \_\_\_\_\_. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).  
 5. ☐ Applicant's reply has overcome the following rejection(s): \_\_\_\_\_.  
 6. ☐ Newly proposed or amended claim(s) \_\_\_\_\_ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).  
 7. ☐ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.  
 The status of the claim(s) is (or will be) as follows:  
 Claim(s) allowed: \_\_\_\_\_.  
 Claim(s) objected to: \_\_\_\_\_.  
 Claim(s) rejected: \_\_\_\_\_.  
 Claim(s) withdrawn from consideration: \_\_\_\_\_.

**AFFIDAVIT OR OTHER EVIDENCE**

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).  
 9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).  
 10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

**REQUEST FOR RECONSIDERATION/OTHER**

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:  
See Continuation Sheet.  
 12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08) Paper No(s). \_\_\_\_\_.  
 13. ☐ Other: \_\_\_\_\_.

/Joseph S. Del Sole/  
 Supervisory Patent Examiner, Art Unit 1791

Continuation of 11, does NOT place the application in condition for allowance because: Applicant's arguments are not persuasive. Applicant argues that the applied art Nakata, Goldwasser, and Tabata are not combinable, because they are not analogous art. However, Nakata is directed to production of a household good, while Goldwasser discloses improved plastic materials for household applications. Like Nakata, Tabata is directed to the production of a household item, which is extruded from plastic materials. Nakata teaches a method of making an elastic strip in the form of a doormat. The claimed materials selection of applicant are different from those of Nakata, but are not novel and have been known in the art of production of household goods for more than 20 years as pointed out by applicant and demonstrated by Goldwasser. The materials of Goldwasser could be incorporated into the method of Nakata with only simple substitution yielding predictable results; therefore, a prima facie case of obviousness for substitution exists (See MPEP 2141). The feel of a doormat is a consideration; therefore, foamed materials are known to be used in the manufacture of doormats (see USP's 3506600 and 3573142) and other household goods. Tabata demonstrates that the claimed foamable composition and method steps were known in the art at the time of invention for the production of elastic strips for the manufacture of household goods. Once again, a prima facie case of obviousness exists over simple substitution of one known element for another to obtain predictable results. Applicant also argues that "solidification through heating" is not taught by Tabata. However, Tabata teaches heating the temperature of the bath at a desired temperature using heaters as previously explained in the Office action mailed on 3/6/09. A person having ordinary skill in the art at the time of invention would understand that the solidification temperature of the liquid should be selected based on the properties of the material to be solidified. Furthermore, the method claims 2 and 3 do not explicitly require a heating step and no curing or crosslinking step is claimed..